

RECEIVED
FEDERAL ELECTION COMMISSION
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

2017 MAR 23 PM 2: 43

2017 MAR 23 PM 1: 32

MUR 7105
Caleb Crosby
American Action Network, Inc.

)
) DISMISSAL AND
) CASE CLOSURE UNDER THE
) ENFORCEMENT PRIORITY
) SYSTEM

SENSITIVE

CELA

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 7105 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

The Complaint alleges that Caleb Crosby and American Action Network, Inc. ("AAN") (collectively "Respondents"), violated the Act by providing false information on an Independent Expenditure Report. Specifically, the Complaint states that on June 4, 2016, Respondents disclosed a \$25,000 expenditure for "telephone calls" in opposition of Helene Schneider, a 2016 candidate for the U.S. House of Representatives from California's 24th Congressional District.² However, the

¹ The EPS rating information is as follows:
October 11, 2016.

Complaint filed June 13, 2016. Response filed

² FEC Form 5, Report of Independent Expenditures Made and Contributions Received (filed June 4, 2016).

1 Complaint alleges that the calls did not oppose Schneider, and cites to a news article that quotes a
2 named Democratic voter as saying that she received a call from a phone bank paid for by AAN that
3 asked her to support Schneider.³ The article suggests that the calls asked for support for Schneider to
4 split the Democratic primary vote.⁴

5 Respondents deny the allegation and assert that the calls were placed in opposition to
6 Schneider and, therefore, AAN correctly disclosed in its report to the Commission that its calls
7 opposed Schneider's candidacy.⁵ Respondents maintain that the Complaint relies on an
8 uncorroborated report in a single newspaper article, and they attach the script that they say was used
9 for the phone calls in question.⁶ The script, printed on the vendor's letterhead, asks the caller if "we
10 can count on you to vote against Helen Schneider."⁷

11 A person that makes or contracts to make independent expenditures aggregating \$1,000 after
12 the 20th day, but more than 24 hours, before the date of an election shall file a report describing the
13 expenditures within 24 hours.⁸ The report must be filed within 24 hours "following the date on
14 which a communication that constitutes an independent expenditure is publicly distributed or

³ *Dem Voter Registration Jumps*, Santa Barbara Independent, <http://www.independent.com/news/2016/jun/06/primary-election-eve/> (June 6, 2016). The article names the source and quotes her, and the article also says that "other registered Democrats received the same calls."

⁴ *Id.* California uses a "Top Two Open Primary" system for state offices, including Congressional elections. All candidates from all parties are listed on a single Primary ballot. Voters choose from this list and the top two candidates advance to the General election. *League of Women Voters of California Education Fund*, <https://cavotes.org/vote/how-vote/voting-primary-election>.

⁵ Resp. at 1-2.

⁶ Resp., Attach. 1.

⁷ *Id.* The Script lists as its target audience Democrats and Independents.

⁸ 52 U.S.C. § 30104(g)(1)(A).

1 otherwise publicly disseminated.”⁹ Each 24-hour report shall indicate whether the independent
2 expenditure is made in support of, or in opposition to, the candidate involved.¹⁰

3 The Complainant and Respondents disagree as to whether the independent expenditure at
4 issue was in support of, or opposition to, Schneider. The Complaint cites to a news article that names
5 a specific voter who stated for the record that she received a call paid for by AAN supporting
6 Schneider. The article refers to other unnamed sources who also claimed to receive such calls. On
7 the other hand, the Respondents directly rebut the allegation and provide the script that was
8 purportedly used for the calls, which clearly opposes Schneider’s candidacy.¹¹ There is no further
9 information that suggests that any other AAN expenditures advocated for Schneider’s election.¹²
10 Thus, an investigation would be necessary to resolve this factual conflict.

11 However, given the amount at issue and the steps needed to establish the facts, we do not
12 believe that an investigation would be a prudent use of the Commission’s resources. Accordingly,
13 we recommend that the Commission, in furtherance of its priorities, exercise its prosecutorial
14 discretion and dismiss the allegation that Respondents filed an inaccurate or misleading 24-Hour
15 Report of an Independent Expenditure.¹³

16 RECOMMENDATIONS

- 17
18 1. Dismiss the allegation that Caleb Crosby and American Action Network, Inc. violated
19 52 U.S.C. § 30104(c) by filing an incorrect report of independent expenditures;
20
21 2. Approve the Factual and Legal Analysis;

⁹ 11 C.F.R. § 104.4(c).

¹⁰ 52 U.S.C. § 30104(c)(2); 11 C.F.R. § 104.3(b)(3)(vii).

¹¹ Resp., Attach. 1.

¹² FEC Form 5, Report of Independent Expenditures Made and Contributions Received (filed June 4, 2016). AAN spent just over \$157,000 during the 2016 election cycle opposing Schneider’s candidacy.

¹³ *Heckler v. Chaney*, 470 U.S. 821 (1985).

3. Approve the appropriate letters; and
4. Close the file as to all Respondents.

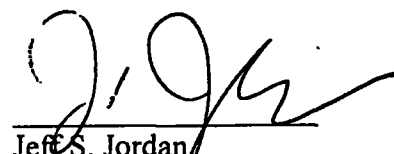
Lisa J. Stevenson
Acting General Counsel


Kathleen M. Guith
Associate General Counsel

3.23.17
Date

BY:


Stephen Gura
Deputy Associate General Counsel


Jeff S. Jordan
Assistant General Counsel


Wanda D. Brown
Attorney

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Caleb Crosby MUR 7105
American Action Network, Inc.

I. INTRODUCTION

This matter was generated by a Complaint alleging that Caleb Crosby and American Action Network, Inc. ("AAN") (collectively "Respondents"), violated the Act by providing false information on an Independent Expenditure Report.¹

II. FACTUAL AND LEGAL ANALYSIS

The Complaint states that on June 4, 2016, Respondents disclosed a \$25,000 expenditure for "telephone calls" in opposition of Helene Schneider, a 2016 candidate for the U.S. House of Representatives from California's 24th Congressional District.² However, the Complaint alleges that the calls did not oppose Schneider, and cites to a news article that quotes a named Democratic voter as saying that she received a call from a phone bank paid for by AAN that asked her to support Schneider.³ The article suggests that the calls asked for support for Schneider to split the Democratic primary vote.⁴

Respondents deny the allegation and assert that the calls were placed in opposition to Schneider and, therefore, AAN correctly disclosed in its report to the Commission that its calls

¹ Compl. At 1 (June 13, 2016).

² FEC Form 5, Report of Independent Expenditures Made and Contributions Received (filed June 4, 2016).

³ *Dem Voter Registration Jumps*, Santa Barbara Independent, <http://www.independent.com/news/2016/jun/06/primary-election-eve/> (June 6, 2016). The article names the source and quotes her, and the article also says that "other registered Democrats received the same calls."

⁴ *Id.* California uses a "Top Two Open Primary" system for state offices, including Congressional elections. All candidates from all parties are listed on a single Primary ballot. Voters choose from this list and the top two candidates advance to the General election. *League of Women Voters of California Education Fund*, <https://cavotes.org/vote/how-vote/voting-primary-election>.

1 opposed Schneider's candidacy.⁵ Respondents maintain that the Complaint relies on an
2 uncorroborated report in a single newspaper article, and they attach the script that they say was
3 used for the phone calls in question.⁶ The script, printed on the vendor's letterhead, asks the
4 caller "[c]an we count on you to vote against Helen Schneider."⁷

5 A person that makes or contracts to make independent expenditures aggregating \$1,000
6 after the 20th day, but more than 24 hours, before the date of an election shall file a report
7 describing the expenditures within 24 hours.⁸ The report must be filed within 24 hours
8 "following the date on which a communication that constitutes an independent expenditure is
9 publicly distributed or otherwise publicly disseminated."⁹ Each 24-hour report shall indicate
10 whether the independent expenditure is made in support of, or in opposition to, the candidate
11 involved.¹⁰

12 The Complainant and Respondents disagree as to whether the independent expenditure at
13 issue was in support of, or opposition to, a federal candidate. The Complaint cites to a news
14 article that names a specific voter who stated for the record that she received a call paid for by
15 AAN supporting Schneider. The article refers to other unnamed sources who also claimed to
16 receive such calls. On the other hand, the Respondents directly rebut the allegation and provide
17 the script that was purportedly used for the calls, which clearly opposes Schneider's candidacy.¹¹

⁵ Resp. at 1-2.

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⁷ *Id.* The Script lists as its target audience Democrats and Independents.

⁸ 52 U.S.C. § 30104(g)(1)(A).

⁹ 11 C.F.R. § 104.4(c).

¹⁰ 52 U.S.C. § 30104(c)(2); 11 C.F.R. § 104.3(b)(3)(vii).

¹¹ Resp., Attach. 1.

1 There is no further information that suggests that any other AAN expenditures advocated for
2 Schneider's election.¹² Thus, an investigation would be necessary to resolve this factual conflict.

3 Given the amount at issue, and the steps needed to establish the facts, the Commission
4 determined that an investigation would not be a prudent use of its resources. Accordingly, in
5 furtherance of its priorities, the Commission exercised its prosecutorial discretion and dismissed
6 the allegation that Respondents filed an inaccurate or misleading 24 Hour Report of an
7 Independent Expenditure.¹³

¹² FEC Form 5, Report of Independent Expenditures Made and Contributions Received (filed June 4, 2016).
AAN spent just over \$157,000 during the 2016 election cycle opposing Schneider's candidacy.

¹³ *Heckler v. Chaney*, 470 U.S. 821 (1985).